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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/747,812      | 12/29/2003  | Gerald A. Hutchinson | APTLTD.043A         | 1883             |

20995 7590 07/11/2006

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| EXAMINER |
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WEEKS, GLORIA R

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| ART UNIT | PAPER NUMBER |
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3721

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/747,812

Applicant(s)

HUTCHINSON ET AL.

Examiner

Gloria R. Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-24 and 26-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 12, 2006 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 line 12 recites the phrase "the flexible pouches" and omits reference to the preform. Since Applicant's antecedent of the flexible pouch is in alternative form with a preform, both the perform and flexible pouch should be referenced in line 12.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 6, 7, 10-13, 16, 18, 19, 22 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256).

In reference to claims 1, 6 and 7, Bettle discloses a manufacturing process comprising: blow molding (12) a preform having at least one layer and a neck portion (figure 2) into a flexible container; filling (14) the flexible container with a desired product; closing or capping (15) the filled container; wherein the neck portion of the preform is used to handle the preform throughout the process (column 1 lines 55-59). Bettle discloses discharging the flexible containers after the container has been filled and capped (column 4 line 66-column 5 line 2), wherein the discharged containers are packaged for shipment (column 1 lines 20-22). However, Bettle does not disclose whether the handling system directly discharges the flexible container into a container or to a subsequent handling system such as a conveyor belt or manual handling. Brown teaches a method of handling flexible containers (11) by their neck, conveying the containers by the neck through a filling and closing process, and subsequently depositing the container into a box (136). It would have been obvious to one having ordinary skill in the art at the time the invention was made modify the process of Bettle to include the step of placing the filled and capped flexible containers into a box, as suggested by Brown et al., for the purpose of shipping the filled containers.

Applicant's limitation with respect to the pouch lacking self-support is not found to disclose a step or define an action of the claimed process. Furthermore, the idea of an article being self-supportive is contingent upon how the article is placed on a surface. A milk jug can be found to lack self-support if it was placed on its open end rather than its bottom end.

Nonetheless, Brown et al. and Bettel teaches that it is known in the art to handle multiple shaped containers by the neck during a manufacturing process.

In reference to claims 10-13, 16, 18 and 19, Bettel discloses an apparatus for manufacturing and filling flexible pouches comprising: a handling system (30-33) preforms and/or flexible pouches through a blow molding machine (12), a filling machine (14), and a closing or capping machine (15) that closes a filled flexible pouch, and released the filled and capped pouches for shipment.

Applicant's limitation of a handling system that places the pouches into a container is not found to be a structural limitation of the handling system, rather a function of the handling system. The handling system of Bettel is found to be capable of depositing the pouch into a box, as, suggested by the handling system (21) of Brown et al, which includes neck gripping means, similar to that of Bettel, that convey a pouch via a neck portion, through a filling and closing station, and subsequently deposits the pouch into a box (136), for the purpose of shipping the filled containers.

In reference to claims 22 and 26-28, Bettel discloses a manufacturing process comprising: placing a preform having at least one layer and a neck portion (figure 2) into a handling system (30, 32; column 4 lines 22-24); blow molding (12) the preform into a flexible container; filling (14) the flexible container with a desired product; closing or capping (15) the filled container; wherein the neck portion of the preform is used to handle the preform throughout the process (column 1 lines 55-59). Bettel discloses discharging the flexible containers after the container has been filled and capped (column 4 line 66-column 5 line 2), but does not disclose further processing of the containers post discharge. Brown teaches a method of

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handling flexible containers (11) by their neck, conveying the containers by the neck through a filling and closing process, and subsequently depositing the container into a box (136). It would have been obvious to one having ordinary skill in the art at the time the invention was made modify the process of Bettel to include the step of placing the filled and capped flexible containers into a box, as suggested by Brown et al., for the purpose of shipping the filled containers.

6. Claims 2, 3, 22, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettel (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256) as applied to claims 1 and 22, and further in view of Wakabayashi (USPN 3,818,785).

Regarding claims 1, 2 and 3, Bettel discloses a process of manufacturing flexible containers, but does not disclose decorating and/or dressing the flexible containers.

Wakabayashi teaches a process of manufacturing flexible containers including the steps of: blow molding (A) a preform into a flexible container; filling (I; column 2 lines 61-62) the flexible container with a desired product; and decorating (K) the flexible container after the container has been filled. It would have been obvious to one having ordinary skill in the art to modify the process of Bettel to include the step of decorating flexible containers, as suggested by Wakabayashi, for the purpose of disclosing information regarding the contents of the flexible container.

In reference to claims 22, 23 and 24, Bettel discloses a process of manufacturing flexible containers, but does not disclose decorating and/or dressing the flexible containers.

Wakabayashi teaches a process of manufacturing flexible containers including the steps of: blow molding (A) a preform into a flexible container; filling (I; column 2 lines 61-62) the flexible

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container with a desired product; and decorating (K) the flexible container after the container has been filled. It would have been obvious to one having ordinary skill in the art to modify the process of Bettle to include the step of decorating flexible containers, as suggested by Wakabayshi, for the purpose of disclosing information regarding the contents of the flexible container.

7. Claim 8, 9, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256) as applied to claims 1, 7, and 28, and further in view of Orinoco et al. (USPN 5,540,879).

With respect to claims 8 and 9, Bettle discloses a flexible container having at least one layer, but does not specifically disclose the composition of the layer(s) of the container. Orinoco et al. teaches a process of blow molding a preform into container, wherein the container includes at least one layer of polyethylene terephthalate (column 1 lines 29-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the process of Bettle to include the polyethylene terephthalate preform of Orinoco et al., since column 1 lines 29-42 of Orinoco et al. states that the use of such a material is well known in the art of blow molding flexible container, as the material is inexpensive and durable.

In reference to claims 29 and 30, Bettle discloses a flexible container having at least one layer, but does not specifically disclose the composition of the layer(s) of the container. Orinoco et al. teaches a process of blow molding a preform into container, wherein the container includes at least one layer of polyethylene terephthalate (column 1 lines 29-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the process of Bettle to include the polyethylene terephthalate preform of Orinoco et al., since column 1 lines

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29-42 of Orinoco et al. states that the use of such a material is well known in the art of blow molding flexible container, as the material is inexpensive and durable.

8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettel (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256) as applied to claim 10, and further in view of Valyi (USPN 5,462,278).

With respect to claims 14 and 15, Bettel discloses an apparatus including a blow-molding machine and a filling machine, but does not disclose a decorating system upstream of the filling machine. Valyi teaches an apparatus including a blow-molding machine having a decorating system which decorates a preform prior to filling. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the blow-molding machine of Bettel, which is upstream of the filling machine, to include the decorating system of Valyi, since column 1 lines 49-53 of Valyi state that such a modification provides an economical and aesthetically pleasing container.

9. Claims 10, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettel (USPN 6,298,638) in view of Valyi (USPN 4,305,772).

In reference to claims 10, 16 and 17, Bettel discloses an apparatus for manufacturing and filling flexible pouches comprising: a handling system (30-33) that handles preforms and/or flexible pouches through a blow molding machine (12), a filling machine (14), and a closing or capping machine (15) that closes a filled flexible pouch, and released the filled and capped pouches for shipment.

Applicant's limitation of a handling system that places the pouches into a container is not found to be a structural limitation of the handling system, rather a function of the handling



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system. Nonetheless, Valyi teaches a manufacturing apparatus including a handling system that handles flexible containers (40) by a neck portion (41), wherein the handling system includes a rigid container (50) placement system (51) prior to any filling of the flexible container (40; column 5 line 59-column 6 lines 3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the manufacturing apparatus of Bettel to include the rigid container placement system of Valyi prior to a filling station, since column 1 line 64-column 2 line 7 of Valyi states that such a modification allows for a snug fit of a rigid container to the flexible container to ensure stability of the flexible container so that the flexible container can stand upright (column 1 lines 14-18).

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-3, 6-24 and 26-30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks  
Examiner  
Art Unit 3721



grw  
July 5, 2006



**SCOTT A. SMITH  
PRIMARY EXAMINER**